



COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

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September 15, 2006

Cheryl Niemi
Washington Department of Ecology
P.O. Box 47600
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RE: First Draft: Guidance for Evaluating the Feasibility of Controls to Meet Water Quality Standards for Dams in Washington (August 2006).

Dear Ms. Niemi:

The Columbia River Inter-Tribal Fish Commission (CRITFC)¹ appreciates the opportunity to provide comments on the first draft of the document: *Guidance for Evaluating the Feasibility of Controls to Meet Water Quality Standards for Dams in Washington* (Draft Guidance). Improving water quality affected by dams in the Columbia River basin is paramount to recover and sustain aquatic life that is secured by treaties. Improving water quality in the Columbia River basin is also an important objective of state, tribal and federal plans and obligations. Water quality standards at a minimum provide a scientifically-developed measure by which resource managers can gauge and improve water habitat for aquatic life.

Achieving Water Quality Compliance

We are supportive of the adaptive management philosophy² and believe that a sound schedule of compliance with meaningful steps and steady progress to achieving compliance with water quality standards is a useful tool for many projects. At the same time, however, no

¹ In 1977, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Nez Perce Tribe, and the Yakama Nation created the Columbia River Inter-Tribal Fish Commission (CRITFC or "Commission"). These four tribes have 1855 treaty rights to take fish that pass their usual and accustomed fishing places. Consequently, it is of critical importance to the tribes to protect and conserve the habitat and life cycle of the fisheries. The Commission functions to protect, promote, and enhance the Columbia River Basin's anadromous fish resources consistent with the treaty-secured interests of its member tribes by formulating a broad, general fisheries program, and providing technical and legal support.

² Sit and Taylor (1998) define adaptive management as a "systematic process for continually improving management policies and practices by learning from the outcomes of operational programs. Its most effective form- "active" adaptive management- employs management programs that are designed to experimentally compare selected policies or practices by evaluating alternative hypotheses about the system being managed."

compliance schedule should allow projects to avoid achieving standards or to gain benefits from non-compliance.

We are concerned that the standard used in the Draft Guidance for defining “feasibility” is based on *affordability* and measured only at the scale of the individual dam owner, as opposed to a larger scale such as the standard metropolitan statistical area (SMSA). According to your analysis, where an alternative may be available (and meets water quality standards at 100%) but is unaffordable for the owner, that alternative may be removed. In effect, the *affordability* test makes compliance with water quality standards subject to a dam owner’s prior financial choices, whether sound or unsound, on matters unrelated to the dam. The problem is, not meeting water quality standards 100% is not meeting standards, and it is unlawful. If meeting standards cannot be achieved through a cost-effective mechanism, then the “business” should reconsider its operations and enterprise. Meeting environmental obligations must be considered a cost of “doing business.” Doing otherwise negatively impacts sovereign resource management obligations and the benefits of aquatic resources for future generations while creating an uneven playing field both within and outside the business community.

Analysis of the language and context of the State’s Draft Guidance against that of the Clean Water Act, with particular reference to *substantial and widespread economic and social impact* (40CFR § 131.10(g)(6)), must not overlook the fact that downstream users will bear the costs of treating the water before use or will incur increased costs to mitigate degradation due to quality of the water on receipt. Analysis of impacts of substandard water quality on downstream users should be explicitly required.

Any economic feasibility analysis of hydroelectric dam modifications must also account for economic conditions of the electric power industry, which has been undergoing significant restructuring over the past decade to increase competitiveness among power generators. The analysis must account for economic affects at the scale of the SMSA, regardless of the viability of any particular dam owner. The restructuring is intended to force firms to be both more efficient and effective with their resources and survive, or to cease operation and let other firms provide the electric power. The newly developing market structure should not be allowed to be used as an excuse for non-compliance.

Likewise, any economic analysis needs to capture the benefit a community will gain from viable and robust fish populations that are a result of achieving and maintaining good water quality. Conducting a sound regional analysis on water quality improvements requires a full and in-depth examination of both costs and benefits; inclusive of ecosystem service benefits. The fact that Ecology has not historically ‘accounted’ for these economic benefits does not excuse Ecology from examining and integrating an appropriate methodology into such analyses.

There is an increasing body of evidence from across the United States and abroad on the vast economic benefits (billions of dollars annually) not accounted for within the context of traditional methods. For example, the Northwest Power Planning Councils’ *Human Effects Analysis of the Multi-Species Framework Alternatives* (NWPPC 1999) noted that there were four categories of human effects from operation of the Federal Columbia River Power System. They included social effects (poverty, mortality, passive use values, other quality of life, environmental quality), tribal effects (salmon, other fish and valued assets, equity between tribal and non-tribal people, water quality, wildlife habitat), economic efficiency (net value of fisheries production, net value of hydropower production, net value of recreation, strategy implementation cost), and regional economic effects (personal income, output and employment). The report noted that fish lost from hydropower production consists of a shifting of economic value from tribal people to non-tribal people without compensation. The issue of redistribution of the river’s wealth and relative equity for tribal people has become more evident with environmental justice guidelines established by the

EPA. Thus, the Council adopted into its report an indicator of relative equity effects between tribal and non-tribal peoples in the analysis. We recommend that Ecology incorporate this perspective into its final guidance document.

The bottom line relative to choices we make in decision-making and policy making contexts, such as that before us, is that natural systems have fundamental implications for their maintenance, and ultimately therefore for the sustainability of the services they provide. The exploitation of natural systems, including efforts to modify and manage them, forces us to confront the tradeoffs between real and potential services, and effects upon their resiliency. It is both appropriate and relatively straightforward to construct lists of the most important of such services. Their valuation—an essential step for making management decisions—imposes greater rigor on the approaches we take towards understanding the full range of economic implications of particular choices, not impossible challenges. Methods that use marginal costing, for example, can easily determine the economic costs associated with having to replace specific services currently provided by nature. Other methods, such as the use of bioeconomic models of fisheries, derive estimates that are consistent with economic theory to identify the range of costs associated with the value of changing the quality of fish habitat by linking fish population stocks with dynamic indices of land use in surrounding watersheds to determine the range of economic impacts.

Diagram in “Special Notes” Section

The diagram on page three is too basic and somewhat confusing, and contains a fair amount of subjective assumptions and value judgments. For example, what does it mean for impacts to be “minor and acceptable” (or “unacceptable” as the other box states)? The language used in this chart should relate to terms that are later clearly defined; these terms do not appear to be defined. If this chart (or other similar) is to be used in the final guidance document, we suggest that it be completely overhauled.

Other Clarifications Needed

At several junctures, the Draft Guidance attempts to clarify that the document and its analyses are to apply to “feasible” as the term is used within Washington’s compliance schedule for dams, rather than variances and/or use attainability analyses. WAC 173-201A(510). There are some inconsistencies in this clarification with the result being that it isn’t entirely clear how this document distinguishes between the applications. It might be helpful for the guidance to describe the federal regulations for both UAAs and variances. We also suggest that the guidance explain that there are some major questions as to the applicability of an economic analysis to UAAs in the context of dams. Simply put, the process for a UAA and a variance is very different from the process envisioned in Washington’s compliance schedule language, and these processes need to be identified and distinguished in this guidance.

The Draft Guidance document appears to be oriented to hydroelectric dam operators and does not address the analysis of other types of firms which may own and operate dams in Washington, i.e. irrigation systems, municipal water supply, etc. The Draft Guidance should address its application to non-hydroelectric dam operators.

We thank you for the opportunity to submit these comments and to participate in this process. If you have any questions about our comments, we would be happy to set up a meeting with you to discuss them. Please feel free to contact Julie Carter at 503-238-0667.

Sincerely,

A handwritten signature in black ink that reads "Olney Patt, Jr." The signature is written in a cursive style with a large, stylized "O" and a prominent "J" at the end.

Olney Patt, Jr.
Executive Director
Columbia River Inter-Tribal Fish Commission

References:

NWPPC 1999. Human Effects Analysis of the Multi-Species Framework Alternatives. Prepared for the Northwest Power Planning Council. CH2M Hill. Portland, Oregon.

Sit, V. and B. Taylor (editors). 1998. Statistical methods for adaptive management studies. Res. Br., B.C. Min. For., Res.Br., Victoria, B.C. Land Manage. Handb. No. 42.